

### REMARKS

Claims 38-50 and 69-103 are pending. Claims 38, 41, 46, and 75 are independent claims. Claims 1-37, 51-68, 76 and 87 are canceled. Claims 75, 77, 78, 80, and 88 are amended. The Applicants thank the Examiner for the allowance of claims 38-50 and 69-74. Claims 75-103 are rejected. The Applicants traverse these rejections and respectfully request reconsideration of the rejected claims in light of the above amendments and following remarks.

#### *Claim Rejections Under 35 U.S.C. §102*

Claims 75, 80, 82, 87 and 97-100 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 3,748,697 to Marchese et al. ("Marchese"). Applicants request reconsideration of this rejection in light of the above amendment.

Marchese discloses a clamp assembly mounted on a perforated band. The clamp assembly includes a fastener formed to surround the band and have a pawl end that engages a periphery of one of the raised perforations of the band. The Examiner appears to rely on Marchese for its disclosure of a band having perforations in the form of engageable teeth.

Marchese does not disclose or suggest *engageable elements arranged in multiple rows, or pairs of adjacent fastener elements in each row defining corresponding wells therebetween for receiving an upper edge of a mating fastener element*. As discussed and illustrated in Applicants' specification, each well defined between adjacent elements in a row is configured to receive an upper edge of a mating fastener element, so as to provide some resistance to relative lateral movement between the engaged fastener elements. Marchese only discloses a single column or row of teeth around the band or strap, and there is nothing about Marchese that would suggest modification to include such an arrangement of fastener elements, particularly as Marchese already and very effectively constrains lateral motion. Therefore, Applicants respectfully request reconsideration of claim 75 and the dependent claims, and withdrawal of the rejection.

Claims 75-80, 82, 86-91, 93 and 101 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 6,911,171 to Lauer ("Lauer").

Lauer discloses a synthetic bottle closure (e.g., as a replacement of cork for sealing wine bottles) that includes a peripheral skin layer defining a fish scale pattern. The Examiner notes FIGS. 4 and 5 as illustrating the peripheral skin layer.

Lauer discloses scales each having "a thick upper end which slopes downwardly to a thin lower end." (Col. 20, lines 10-12.) However, Lauer fails to disclose or suggest engageable elements each having *an engageable side that overhangs the sheet-form base*. Instead, Lauer only shows a side of the scale as extending perpendicular from the outer surface of the peripheral skin layer. In Lauer, the engageable side of the scale is the side that slopes downwardly from the thick upper end to the thin lower end rather than the shorter vertical side. Furthermore, Lauer provides no suggestion to modify the scales, as the disclosed intent of the scales is to increase frictional forces between the outwardly facing surface of the closure device and the inside smooth surface of a bottle, thus increasing the pull-out force of the closure device.

Applicants respectfully request reconsideration of claim 75 and the dependent claims, and withdrawal of the rejection.

Claims 75-80, 82, 87, 89, 94, 95, 97, 98, 102 and 103 are rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 7,117,536 to Burnett et al. ("Burnett").

Burnett discloses a silicone grabber (e.g., for use as an oven mitt) that includes a generally C-shaped body defining a fingers pocket at a first end and a thumb pocket at an opposite, second end. The Examiner appears to rely on Burnett for disclosing a plurality of protuberances in the form of fish-scales on inner opposing walls of the C-shaped body to reduce slippage of the device when held by a user.

Burnett fails to disclose or suggest engageable elements each having *an engageable side that overhangs the sheet-form base*. In Burnett, as in Lauer, the surface of the scale that 'engages' or bears against another surface (e.g., a smooth surface of a pot) in use is the outwardly facing side that gradually slopes downwardly from the thick upper end to the thin lower end. Furthermore, as with Lauer, Burnett provides no suggestion to modify the scales, as the disclosed intent of the protuberances is to increase frictional forces between the grabber and a

grabbed item, so as to prevent slippage along the engageable side (i.e., outwardly facing side) of the scale.

Applicants respectfully request reconsideration of claim 75 and the dependent claims, and withdrawal of the rejection.

*Claim Rejections Under 35 U.S.C. §103*

Claims 81, 83-85 and 92 are rejected under 35 U.S.C. §103(a) as being obvious over Lauer.

Regarding claims 81, 83-85 and 92, the aforementioned arguments over Lauer regarding claim 75 apply, in pertinent parts. In particular, Lauer fails to disclose or suggest engageable elements each having an engageable side that overhangs the sheet-form base.

The Examiner acknowledges that Lauer fails to disclose the fastener dimensions recited in claims 81 and 83-85 or that the curved surface comprises an inner surface of the tube, as recited in claim 92, but states that the dimensions and the feature are a matter of design choice, citing In Re Rose and In re Gazda. Many of these features provide particular advantage in combination with the features of the base claim, and Applicants respectfully traverse the conclusory statement that it would have been obvious at the time of the invention to have provided such features in the claimed fastener product. Such features are not simply design choices, as they clearly relate to the performance of the claimed structure and are not mere optimizations.

Claims 81, 83-85 and 96 are rejected under 35 U.S.C. §103(a) as being obvious over Burnett.

Regarding claims 81, 83-85 and 96, the aforementioned arguments over Burnett regarding claim 75 apply, in pertinent parts. In particular, Burnett fails to disclose or suggest engageable elements each having an engageable side that overhangs the sheet-form base.

Again, the Examiner does not argue that Burnett fails to disclose the fastener dimensions recited in claims 81 and 83-85, but states that the dimensions and feature are a matter of design choice, citing In Re Rose. As noted above, Applicants respectfully traverse the conclusory

statement that it would have been obvious at the time of the invention to have provided such features in the claimed fastener product, as they are not simply design choices.

In view of the foregoing, Applicants respectfully submit that the pending claims are patentable over the cited art of record as depending from a patentable base claim. Applicants respectfully request reconsideration of the pending claims and respectfully request a notice of allowance.

### CONCLUSION

The attorney of record below invites the Examiner to call with any questions regarding this matter, so that we can continue to advance the prosecution of this matter.

It is believed that all of the pending claims have been addressed. However, the absence of a reply to a specific rejection, issue or comment does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above may not be exhaustive, there may be reason for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to amendment.

No charges are believed due. However, if any fees are due, they are being paid concurrently herewith on the Electronic Filing System (EFS) by way of Deposit Account authorization. Please apply all charges or credits to Deposit Account No. 06-1050, referencing the above identified Attorney Docket Number.

Applicant : Christopher M. Gallant et al.  
Serial No. : 10/785,133  
Filed : February 24, 2004  
Page : 14 of 14

Attorney's Docket No.: 05918-324001 / VGCP No.  
7020

Respectfully submitted,

Date: July 16, 2008

/Brett A. Krueger/

Brett A. Krueger  
Reg. No. 54,243

Fish & Richardson P.C.  
225 Franklin Street  
Boston, MA 02110  
Telephone: (617) 542-5070  
Facsimile: (877) 769-7945